

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
REGENT MUSIC CORPORATION, :

Plaintiff, :

-against- :
SUGAR HILL MUSIC PUBLISHING LTD., :
and JOSEPH ROBINSON, JR. :

Defendants.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
RECONSIDERATION**

This memorandum of law is submitted by plaintiff Regent Music Corporation (“Regent”) in support of its motion the motion for reconsideration pursuant to Local Civil Rule 6.3 of the United States District Court for the Southern District of New York. Specifically, Regent requests that this Court reconsider its January 25, 2008 Memorandum Order (the “Order”) (a copy of which is annexed hereto as Exhibit A) which granted Defendants’ then pending motion to dismiss the complaint on the grounds that Regent did not have standing as a copyright owner to bring its claim for copyright infringement.

Preliminary Statement

During a January 25, 2008 conference, the Court informally heard counsel with respect to Defendants’ motion to dismiss for Regent’s lack of standing and, ultimately, issued the Order dismissing the complaint while granting Regent “leave to file an amended complaint showing that the complaining party [Regent] has standing to bring this claim.”

Regent hereby respectfully submits that reconsideration and vacatur of the Order is warranted

because the Court based its decision on the improper belief that Regent lacked standing to commence this action. The Court reasoned that since the copyright renewal registration certificate listed as the copyright claimant, Jerry Lordan, the original author of the subject musical composition, "Apache" (the "Composition"), only Mr. Lordan or his statutory successors had standing to maintain this action. The Court took this position even though evidence had been submitted indicating that Regent acted as the American subpublisher and agent of the British company, Francis, Day & Hunter, Ltd., which had contractually obtained the renewal rights from Mr. Lordan. The Court also failed to properly consider Regent's argument that listing the author as the claimant on the copyright renewal registration certificate was the commonly accepted manner in which such certificates were completed and filed. The Court stated that common practice was no substitute for proper procedure.

In fact, however, the practices and policies of the United States Copyright Office in effect at the time of the filing of the renewal certificate in 1988 prohibited a renewal claimant, such as Francis, Day & Hunter, Ltd., from registering a renewal claim as an assignee of the copyright and mandated that such a renewal certificate be filed in the name of the author (as was done in this case). Regent, therefore, properly filed the registration renewal certificate on behalf of its principal, Francis, Day & Hunter, Ltd. in 1988, when it listed Mr. Lordan, the author, as the copyright claimant even though actual ownership resided in the British publisher. Indeed, had Regent filed the renewal certificate in any other form it would have been rejected by the Copyright Office.

Since the renewal certificate for the Composition was properly filed in 1988, Regent has standing, as the agent of Francis, Day & Hunter, Ltd., the assignee, by contract, of said renewal rights, to maintain this action for copyright infringement. The Court should, therefore, vacate the Order and deny the Defendants' underlying motion to dismiss the complaint.

ARGUMENT

THE COURT'S ORDER OF DISMISSAL SHOULD BE VACATED BECAUSE PLAINTIFF'S FILING OF THE COPYRIGHT RENEWAL CERTIFICATE IN THE NAME OF THE AUTHOR WAS IN ACCORDANCE WITH COPYRIGHT OFFICE RULES AND DID NOT DIVEST THE PUBLISHER OF OWNERSHIP RIGHTS IN THE COMPOSITION

Local Civil Rule 6.3 of the United States District Court for the Southern District of New York requires that a motion for reconsideration of a court order include "a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked."¹ The movant "must demonstrate that the Court overlooked controlling decisions or factual matters that were put before the Court on the underlying motion." *Lichtenberg v. Besicorp Group Inc.*, 28 Fed. Appx. 73, 75; 2002 U.S. App. LEXIS 1481, at *4 (2d Cir. 2002). "The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992).

In this case, Regent respectfully submits that the Court simply overlooked or misconstrued the argument set forth by Regent that it was proper "music publishing industry practice" for Regent to file the renewal certificate for the Composition in the name of the original author, Jerry Lordan c/o Francis Day & Hunter Ltd., even though the actual owner was Regent's principal, the British publishing firm of Francis, Day & Hunter, Ltd., which had acquired said renewal rights through contract. (Compl. ¶8 and Affidavit of Kenneth Higney dated January 9, 2008, Para. 9 and Ex. B). The form of the renewal registration submitted in 1988 by Regent was in accordance with the Copyright Office's then controlling policies and procedures which

¹ By endorsed order dated March 4, 2008 (a copy of which is annexed hereto as Exhibit B), the Court granted Regent's request to bring this motion on or before March 14, 2008.

required that the renewal certificate be filed in the name of the author, and not the actual owner.

Specifically, U.S. Copyright Office, *Compendium II: Compendium of Copyright Office Practices* § 1319.06 (1984), in effect until 1992, states:

Assignment of renewal interests. Registration must be made in the name of the statutory claimant, even though the statutory claimant has assigned all of his or her interests in the renewal term.
For example, ***registration cannot be made in the name of an “assignee,” “proprietor,” “attorney in fact,” or “owner per agreement.”*** (emphasis added).

The Copyright Renewal Act of 1992 revised the above provision to allow assignees to file renewal certificates provided that the original author or other statutory beneficiary is identified. See 17 U.S.C. §304(3)(A)(ii) (“An application to register a claim to the renewed and extended term of copyright in a work may be made to the Copyright Office . . . at any time during the renewed and extended term by any person in whom such further term vested . . . or by any successor or assign of such person”). Thus, before 1992, a renewal claimant would have been prohibited from filing a renewal certificate in the name of anyone other than the author or statutory claimant even if renewal rights had been contractually transferred by the author to an assignee, such as Francis, Day & Hunter, Ltd. Simply stated, there was no other acceptable means of filing a renewal certificate with the Copyright Office in 1988 other than the means employed by Regent in this action. Relevant excerpts of the Compendium are annexed hereto as Exhibit C.

Given the controlling rules and regulations then in effect, the renewal certificate filed in 1988 for the Composition is in the proper form and remains valid. The Order, therefore, contains a clear error with respect to Regent’s standing to maintain this action which should be corrected by means of vacatur. Further, given the fact that Regent has established itself as the proper party

to bring this action, by virtue of assignment, Defendants' motion should be denied and this case should be allowed to proceed on the merits.

Conclusion

Since Regent complied with the controlling rules and regulations of the Copyright Office when it filed the renewal certificate for the Composition in 1988, the renewal certificate is valid. As the agent of the assignee of the renewal rights of the Composition, Regent therefore has standing to maintain this action. As such, Regent respectfully submits that the Order should be vacated and also that Defendants' underlying motion to dismiss the complaint for Regent's lack of standing be denied.

Dated: New York, New York
March 11, 2008

EISENBERG TANCHUM & LEVY
Attorneys for Plaintiff Regent Music Corporation

By: 
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To: Cinque & Cinque, P.C.
Attorneys for Defendants Sugar Hill Music Publishing, Ltd. And Joseph Robinson, Jr.
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Exhibit A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

REGENT MUSIC CORPORATION,

UNITED STATES DISTRICT JUDGE

07 CIV. 9510 (LLS)

Plaintiff,

-against-

SUGAR HILL MUSIC PUBLISHING, LTD.,
and JOSEPH ROBINSON, JR.,

Defendants.

NOTICE OF MOTION
TO DISMISS COMPLAINT

DOC SIDNEY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/25/08

PLEASE TAKE NOTICE that upon the annexed declaration of James P. Cinque,

Esq. dated December 27, 2007, the exhibits annexed thereto, and upon all pleadings and proceedings heretofore had herein, defendants will move this Court at 9:30 a.m. or as soon as counsel can be heard on January 21, 2008 before the Honorable Louis L. Stanton at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007 for an Order dismissing the complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, upon the ground that the copyright referred to in the complaint (Registration No. RE 380-196) is not owned by plaintiff.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Civil Rule 6.1(b)

After hearing counsel this morning, this motion is granted and the complaint is dismissed, with leave to file an amended complaint showing that the complaining party has standing to bring the claim. So Ordered

Louis L. Stanton 1/25/08

answering papers must be served within ten (10) business days.

DATED: NEW YORK, NEW YORK
DECEMBER 27, 2007

CINQUE & CINQUE, P. C.

By: _____ /s _____

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ORIGIN^{AL}

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February 27, 2008

By Hand

Hon. Louis L. Stanton
Judge, United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: Regent Music Corporation v. Sugar Hill Music Publishing, Ltd., et al.
United States District Court, Southern District of New York
07 Civ. 9510 (LLS)

Dear Judge Stanton:

I am the attorney for Regent Music Corporation ("Regent"), the plaintiff in the above-captioned action. I write this letter in accordance with the Court's Individual Practice Rules seeking permission to move this Court for reconsideration of its order of January 25, 2008, dismissing the complaint in this action.

At a conference held before the Court on January 25, 2008, the Court granted defendants' motion dismissing the complaint "with leave to file an amended complaint showing that the complaining party has standing to bring the claim." A copy of the Court's order is annexed hereto as Exhibit A. The Court based its holding on its belief that the copyright renewal form submitted by Regent to the United States Copyright Office concerning the musical composition entitled, "Apache," listed the author of that song as the renewal claimant, not Regent. Thus, according to the Court, Regent did not have standing to bring the action, even though Regent, as the agent for the English-based publisher of the song, had contractual rights to the copyright in its renewal term.

The Court's decision, however, is inconsistent with the practices and policy of the United States Copyright Office in 1988, in effect at the time of the filing of the renewal certificate, which prohibited the Office from registering a renewal claim by the assignee of the claim (i.e., the publisher). Kent Dunlap, an attorney with that Office, confirms in his letter to me, a copy of which is annexed hereto as Exhibit B, that until 1992 the Copyright Office did not permit the

Granted
More
within
10 days
of today.
So
Ordered
Louis L.
Stanton
3/4/08

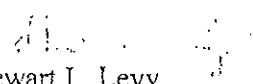
EISENBERG TANCHUM & LEVY

assignee (e.g., a publisher) of a renewal copyright to submit the copyright renewal registration. The claimant on such registration was required to be the author. [See, Section 1310.06 of the *Compendium of Copyright Office Practices II* (1984), cited by Mr. Dunlap, a copy of which is annexed hereto as Exhibit C]. According to Mr. Dunlap, however, the listing of the author as the copyright claimant on the renewal registration certificate did not compromise the ownership rights of the publisher who acquired those rights by contract.

The copyright renewal certificate filed by Regent in 1988 for the composition, "Apache," therefore correctly listed the song's author as the claimant. It does not in any way limit Regent's rights, as the North American agent for the publisher who, by contract, had secured ownership of the renewal rights in the song, from commencing the above-captioned litigation against a copyright infringer.

In light of this information, I respectfully request that the Court either restore the action to its calendar or permit Regent to make a motion seeking such restoration.

Respectfully submitted,


Stewart L. Levy

SLL/md
Encl.

cc: James P. Cinque, Esq. (By Hand)
Cinque & Cinque, P.C.
Attorneys for Defendants Sugar Hill
Publishing, Ltd., and Joseph Robinson, Jr.

COMPENDIUM II

COMPENDIUM
OF
COPYRIGHT OFFICE PRACTICES

Under the Copyright Law Which
Became Fully Effective on
January 1, 1978, Including
Title 17 of the United States
Code and Amendments Thereto

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20559

1984

Chapter 1300

RENEWAL OF COPYRIGHT

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- 1301.01 Works copyrighted before January 1, 1978.
- 1302 Time limits for renewal.
- 1302.01 Informal applications.
- 1303 Computing term for published works.
- 1303.01 Antedated notice.
- 1303.02 Postdated notice.
- 1304 Computing term for unpublished works.
- 1305 Amendment after deadline.
- 1306 Date of receipt.
- 1306.01 Delay in delivery caused by disruption of postal or other services.
- 1307 Application received before the renewal year.
- 1308 Application received after the renewal year.
- 1309 Original registration.
- 1309.01 Exception to requirement for original registration.
- 1310 Contributions to periodicals and composite works.
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- 1310.03 Identification of composite work.
- 1310.04 Different claimants.
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Renewal of Copyright
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- 1311.03 Separate applications.
- 1311.04 Installments.
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1313 Renewal claimants: authors.

- 1313.01 Author still living.
- 1313.02 Author's name not in records of original registration.
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1314 Renewal claimants: widows, widowers, and children.

- 1314.01 Single class.
- 1314.02 Definition of widow or widower.
- 1314.03 Definition of children.

1315 Renewal claimants: executors.

- 1315.01 Qualification.
- 1315.02 Personal right.
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1316 Renewal claimants: next of kin.

- 1316.01 Definition.
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1317 Renewal claimants: proprietors.

- 1317.01 Definition.
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- 1317.03 Posthumous works.
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- 1317.05 Individual contributions.
- 1317.06 Corporate body.
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Chapter 1300
Renewal of Copyright
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- 1318.03 Adverse claims.
- 1318.04 Adverse claims: conflicts concerning the author and the author's successors.
- 1318.05 Adverse claims: conflicts concerning proprietors, authors, and authors' successors.

1319 Unacceptable renewal claims.

- 1319.01 Personal right.
- 1319.02 Deceased person.
- 1319.03 Claimants not named, only status given.
- 1319.04 Claimant fails to qualify.
- 1319.05 Successors or representatives of claimants.
- 1319.06 Assignment of renewal interests.
- 1319.07 Extent of claim.

1300-31

1318

Joint renewal claimants. (cont'd)

1318.05

Adverse claims: conflicts concerning proprietors, authors, and authors's successors.
(cont'd)

3) (cont'd)

in whose name registration has already been made. If so, registration will be made if the applicant reasserts the claim. If not, a new application should be submitted confining the claim to the material written by employees for hire.

4) Where the original claim named an employer in a work made for hire as the author, and a renewal application names an individual author, the Copyright Office will write to the renewal applicant requesting information concerning the circumstances under which the work was written. If the applicant asserts that the work was not made for hire, the renewal claim will be registered on behalf of the author or the author's statutory heirs.

1319

Unacceptable renewal claims. The following general principles and practices govern the acceptability of renewal claims.

1319.01

Personal right. The right to claim renewal copyright is a personal right.

1319.02

Deceased person. A renewal claim cannot be registered in the name of a deceased person. The Copyright Office does not search to determine whether or not the renewal claimant is alive. If, however, the Copyright Office has information that the claimant died before the receipt in the Copyright Office of the renewal application, the Office will refuse to register the claim as submitted.

[1984]

1300-32

1319 Unacceptable renewal claims. (cont'd)

1319.03 Claimant not named, only status given. The renewal right accrues to an individual person or firm, and not to a status. Claims by "the Executor of James Fitzgerald" or "the executors of the author" or by "the next of kin of the author" without specifically naming the claimant are not acceptable.

1319.04 Claimant fails to qualify. The Copyright Office cannot register a renewal claim unless the basis of claim is one that is acceptable under the statute. If none of the claimants listed in the statute exists or can be identified, registration must be refused.

1319.05 Successors or representatives of claimants. The successors or representatives of a person who would have been entitled to claim renewal if still living, are unacceptable renewal claimants. For example, the executor of the author's widow is an unacceptable renewal claimant.

1319.06 Assignment of renewal interests. Registration must be made in the name of the statutory claimant, even though the statutory claimant has assigned all of his or her interests in the renewal term. For example, registration cannot be made in the names of an "assignee," "proprietor," "attorney in fact," or "owner per agreement."

1319.07 Extent of claim. A renewal claim in a published work can cover only the material which was first published in that particular version of the work.

1319.07(a) Later version. The original author of a published work cannot claim renewal in a later version of that work unless that author contributed to the new matter on which copyright in the later version was